

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

IN RE: CIRCUIT CITY STORES, INC. et al.  
Debtors

Case #08-35653-KRH  
Jointly Administered  
Chapter 11

**AMENDED**  
**COLUMBIA PLAZA SHOPPING CENTER VENTURE**  
**NOTICE OF MOTION**

Columbia Plaza Shopping Center Venture ("Columbia Plaza"), by its counsel, has filed papers with the Court Requesting the Court to enter an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S. C § 365 (d)(3).

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then on or before **February 24, 2009** of this notice, you or your attorney must:

**XXX** File with the court, at the address shown below, a written request for a hearing [or a written response pursuant to Local Bankruptcy Rule 9013- (H)]. If you mail your request for hearing (or response) to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

Clerk of Court  
United States Bankruptcy Court  
701 East Broad Street, Ste 4000  
Richmond, VA 23219

You must also mail a copy to:

Robert B. Hill, Esquire  
Hill & Rainey, Attorneys  
2425 Boulevard, Ste 9  
Colonial Heights, VA 23834

**XXX** Attend a hearing to be held on **March 3, 2009 @ 2:00pm**, U.S. Courthouse, Rm 5000, 701 East Broad Street, Richmond, VA 23219.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: 2/6/09

Signature, name, address and telephone number  
of person giving notice:

/s/ ROBERT B. HILL  
Robert B. Hill, Esquire  
George P. Eliades, Co-Counsel SBA #38314  
Hill & Rainey, Attorneys  
Counsel for Columbia Plaza Shopping Center Venture  
SBA #18751  
2425 Boulevard, Suite 9  
Colonial Heights, VA 23834  
(804) 526-8300

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 6th of February, 2009, a true copy of the foregoing Notice of Motion and the Motion of Columbia Plaza Shopping Center Venture for entry of an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S. C. §365(d)(3) to the following attached Service list and ELECTRONICALLY FILED WITH THE Clerk of Court using CM/ECF system, which shall cause notice of electronic filing to be served on all registered user of the ECF system that have filed notices of appearance in this case:

/S/ROBERT B. HILL

Robert B. Hill, Esquire

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

IN RE: CIRCUIT CITY STORES, INC. et al.  
Debtors

Case #08-35653-KRH  
Jointly Administered  
Chapter 11

**AMENDED**  
**MOTION OF COLUMBIA PLAZA SHOPPING CENTER VENTURE**  
**FOR AN ORDER COMPELLING PAYMENT OF**  
**POST-PETITION RENT PURSUANT TO 11 U.S.C. §365(d)(3)**

Columbia Plaza Shopping Center Venture, (“Columbia Plaza”), by and through is undersigned counsel, hereby moves for the entry of an Order compelling the above mentioned debtor (“Debtor”) to pay post-petition rent. In support of this Motion, Columbia Plaza, respectfully states as follows:

**BACKGROUND**

1. On November 10, 2008, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United State Code.
2. Columbia Plaza is a party of a Lease Agreement (“Lease”) with one or more of the debtors at the following address: Columbia Plaza Shopping Center, 1901 Bernadette Drive No. 2, Columbia , Missouri 65201. The foregoing premises is hereinafter referred to as the “Leased Premises.”
3. The debtors have been in possession of the Leased Premises since the filing of the Petitions in this case.  
  
Robert B. Hill, Esquire  
George P. Eliades, II Co-Counsel SBA: 18751  
HILL & RAINEY, ATTORNEYS  
Counsel for Columbia Plaza Shopping Center Venture  
SBA: 18751  
2425 Boulevard, Suite 9  
Colonial Heights, VA 23834  
(804) 526-8300
4. The debtors have failed to pay rent to Columbia Plaza for the Leased Premises for

the post-petition period beginning November 10, 2008 through November 30, 2008 in the amount of Twenty Nine Thousand Nine Hundred Eighty Three and 91/100 Dollars (\$29,983.91). The Foregoing amount is hereinafter referred to as the “Stub Rent.”

**RELIEF REQUESTED**

5. Columbia Plaza respectfully requests the Court enter an Order that compels the debtors to immediately pay the Stub Rent to Landlord.

6. In addition, Columbia Plaza, is entitled to be paid post-petition rent on an ongoing basis on the first day of each month, said rent being paid in advance.

7. Section 365(d)(3) of the Bankruptcy Code states that the debtor-in- possession must “timely perform all the obligations of the debtor...arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected..” 11 U.S. C. §365 (d)(3). In enacting section 365 (d)(3) of the Bankruptcy Code, Congress intended to address the plight of landlords who, unlike professionals and other providers of goods and services to a debtor-in-possession in the ordinary course of business, are compelled to extend credit.

8. This case presents the circumstances that Congress intended §365(d)(3) of the Bankruptcy Code to address. The debtors have occupied and possessed the Leased premises post-petition without performing the post-petition obligations under the Lease.

9. Courts have continually held that a landlord is entitled to immediate payment of post-petition, pre-rejection rental payments, pursuant to 11 U.S. C. §365(d)(3). See in re: *Pudgie’s Div. Of New York, Inc.*, 202 B. R. 832 (Bank. S.D.N.Y. 1996); see also In re: *Wingspread Corp.*, 178 B.R. 305 (Bankr.D. Mass. 1995); see also In re: *Manhattan King David Restaurant, Inc. V. Levine*, 163 B. R. 36 (S. D. N.Y. 1993); see also In re: *Rare Coin Galleries of American, Inc.*, 72 B. R. 748 (d. Mass 1987); see also in re: *Matter of the Barrister of Delaware Ltd.*, 49 B.R. 446 (Bankr.D. Del. 1985). Accordingly, the Court should enter and order that compels the Debtor to immediately pay the Post-Petition Rent to Burbank to satisfy its obligations under the Lease and §365(d)(3) of the Bankruptcy Code.

10. Additionally, pursuant to the terms of the Lease, the Debtor is obligated to reimburse Columbia Plaza for the reasonable attorney's fees and cost incurred by Columbia Plaza in connection with debtor's failure to comply with the terms of the Lease. Accordingly, Columbia Plaza respectfully requests the debtors be directed to pay attorney's fees and costs incurred by Columbia Plaza in connection with the filing and prosecution of this Motion.

**WHEREFORE,** Columbia Plaza respectfully requests this Court to enter an Order that compels debtors to immediately pay Columbia Plaza the amount of Twenty Nine Thousand Nine Hundred Eighty Three and 91/100 Dollars (\$29,983.91) plus Landlord's reasonable attorney's fees and costs and grant Landlord such other and further relief as the Court deems proper and equitable.

Dated: January 29, 2009

COLUMBIA PLAZA SHOPPING CENTER VENTURE  
BY: /s/ ROBERT B. HILL  
Of Counsel

Robert B. Hill, Esquire  
George P. Eliades, II Co-Counsel SBA# 38314  
HILL & RAINEY, ATTORNEYS  
Counsel for Columbia Plaza Shopping Center Venture  
SB#18751  
2425 Boulevard, Suite 9  
Colonial Heights, VA 23834  
(804) 526-8300

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I, the undersigned, hereby certify that on the 6<sup>th</sup> of February, 2009, a true copy of the foregoing Notice of Motion and the Motion of Columbia Plaza Shopping Center Venture for entry of an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S. C. §365(d)(3) to the following attached Service list and ELECTRONICALLY FILED WITH THE Clerk of Court using CM/ECF system, which shall cause notice of electronic filing to be served on all registered user of the ECF system that have filed notices of appearance in this case:

/S/ROBERT B. HILL

Robert B. Hill, Esquire

Service List

**Kevin M. Newman**

Menter, Rudin & Trivelpiece, P.C.  
308 Maltbie Street, Suite 200  
Syracuse, NY 13204-1498

**Min Park**

Connolly Bove Lodge & Hutz LLP  
1875 Eye street, Suite #1100  
Washington, DC 20006

**Courtney E. Pozmantier**

Klee, Tuchin, Bogdanoff & Stern LLP  
1999 Avenue of the Stars  
39th Floor  
Los Angeles, CA 90067

**Fred B. Ringel**

Robinson Brog Leinwand Greene, et al.  
1345 Avenue of the Americas  
31st Floor  
New York, NY 10105

**Jeremy Brian Root**

Blankingship & Keith, P.C.  
4020 University Dr. Ste. 300  
Fairfax, VA 22030

**Jeremy W. Ryan**

Saul Ewing LLP  
222 Delaware Avenue  
P.O. Box 1266  
Wilmington, DE 19801

**Scott A. Semenek**

Wildman, Harrold, Allen & Dixon  
225 West Wacker Drive  
Chicago, IL 60606-1229

**Jesse Silverman**

Ballard Spahr Andrews & Ingersoll, LLP  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103

**Scott A. Stengel**

Orrick, Herrington & Sutcliffe, LLP  
Columbia Center  
1152 15th Street, NW  
Washington, DC 20005-1706

**Roy M. Terry, Jr.**

DurletteBradshaw, PLC  
600 E. Main St., 20th Fl.  
Richmond, VA 23219

**Constantinos G. Panagopoulos**

Ballard Spahr Andrews & Ingersoll, LLP  
601 13th Street, NW  
Suite 1000 South  
Washington, DC 20005-3807

**David M. Poitras**

Jeffer, Mangels, Butler & Marmaro LLP  
1900 Avenue of the Stars, 7th Floor  
Los Angeles, CA 90067

**Michael Reed**

McCreary, Veselka, Bragg & Allen  
700 Jeffrey Way, Suite 100  
Round Rock, TX 78680

**Philip M. Roberts**

Berkeley & Degaetani  
1301 N. Hamilton St., #200  
Richmond, VA 23220

**Paul Rubin**

Herrick, Feinstein LLP  
Two Park Avenue  
New York, NY 10016

**Michael J. Sage**

O'Melveny & Myers LLP  
7 Times Square  
Times Square Towers  
New York, NY 10036

**John L. Senica**

Miller, Canfield, Paddock and Stone, PLC  
225 W. Washington, Suite 2600  
Chicago, IL 60606

**Stephen W. Spence**

Phillips, Goldman & Spence  
1200 North Broom Street  
Wilmington, DE 19806

**Mark Stromberg**

Stromberg & Associates, PC  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240

**Dylan G. Trache**

Wiley Rein LLP  
7925 Jones Branch Drive  
Suite 6200  
McLean, VA 22102

**Ernie Zachary Park**

Bewley, Lassleben & Miller, LLP  
13215 E. Penn Street, Suite 510  
Whittier, CA 90602-1797

**David L. Pollack**

Ballard Spahr Andrews & Ingersoll LLP  
51st Fl-Mellon Bank Center  
1735 Market Street  
Philadelphia, PA 19103

**David G. Reynolds**

Glass & Reynolds  
P.O. Box 1700  
Corrales, NM 87048

**Julie H. Rome-Banks**

Binder & Malter, LLP  
2775 Park Avenue  
Santa Clara, CA 95050

**Eric Christopher Rusnak**

K&L Gates LLP  
1601 K Street N.W.  
Washington, DC 20006

**Jeffrey Scharf**

Taxing Authority Consulting Services, PC  
2812 Emerywood Parkway  
Suite 220  
Richmond, VA 23294

**Joseph S. Sheerin**

McGuire Woods LLP  
One James Center  
901 East Cary Street  
Richmond, VA 23219

**Richard F. Stein**

Special Assis. U. S. Attorney  
600 East Main Street, Ste 1601  
Richmond, VA 23219-2430

**Jeffrey L. Tarkenton**

Womble Carlyle Sandridge & Rice, PLLC  
1401 Eye Street, N.W.,  
Seventh Floor  
Washington, DC 20005

**Ronald M. Tucker**

Simon Property Group  
225 W. Washington Street  
Indianapolis, IN 46204

Service List

**Eric D. Goldberg**  
Stutman, Treister & Glatt, P.C.  
1901 Ave of the Stars-12th Floor  
Los Angeles, CA 90067

**David A. Greer**  
Law Offices of David A. Greer PLC  
500 East Main Street Ste 1200  
Norfolk, VA 23510

**Eric A. Handler**  
Donahue Gallagher Woods LLP  
300 Lakeside Drive, Suite 1900  
Oakland, CA 94612

**Brian D. Huben**  
Katten Muchin Rosenman LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, CA 90067-6042

**Scott R. Kipnis**  
Hofheimer Gartlir & Gross LLP  
530 Fifth Ave.  
New York, NY 10036

**Darryl S. Laddin**  
Arnall Golden Gregory LLP  
171 17th St. N.W. Suite 2100  
Atlanta, GA 30363-1031

**James V. Lombardi**  
Ross, Banks, May Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, TX 77056

**Christine D. Lynch**  
Goulston & Storrs, P.C.  
400 Atlantic Avenue  
Boston, MA 02110-3333

**Bruce H. Matson**  
LeClair Ryan, A Professional Corporation  
Riverfront Plaza, East Tower  
951 East Byrd Street  
P.O. Box 2499  
Richmond, VA 23218-2499

**Jennifer McLain McLemore**  
Christian & Barton, LLP  
909 East Main Street, Suite 1200  
Richmond, VA 23219

**William A. Gray**  
Sands Anderson Marks & Miller  
P.O. Box 1998  
Richmond, VA 23218-1998

**Elizabeth L. Gunn**  
DuretteBradshaw, PLC  
600 East Main Street, 20th Floor  
Richmond, VA 23219

**Dion W. Hayes**  
McGuireWoods LLP  
One James Center, 901 E. Cary St.  
Richmond, VA 23219

**Kenneth C. Johnson**  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215

**Leonidas Koutsouftikis**  
Magruder & Associates  
1889 Preston White Drive  
Suite 200  
Reston, VA 20191

**John J. Lamoureux**  
Carlton Fields, P.A.  
P.O. Box 3239  
Tampa, FL 33601-3239

**Henry Pollard Long, III**  
Hunton & Williams, LLP  
951 East Byrd Street  
Riverfront Plaza East Tower  
Richmond, VA 23219-4074

**Michael W. Malter**  
Binder & Malter  
2775 Park Ave.  
Santa Clara, CA 95050

**Robert P. McIntosh**  
U.S. Attorney's Office  
600 East Main St., Suite 1800  
Richmond, VA 23219

**Jeffrey Meyers**  
Ballard Spahr Andrews & Ingersoll  
51st Fl- Mellon Bank Center  
1735 Market Street  
Philadelphia, PA 19103

**Steven H. Greenfeld**  
Cohen Baldinger & Greenfeld, LLC  
7910 Woodmont Avenue  
Suite 760  
Bethesda, MD 20814

**Brian P. Hall**  
Smith, Gambrell & Russell, LLP  
Suite 3100, Promenade II  
1230 Peachtree Street, N.E.  
Atlanta, GA 30309-3592

**Neil E. Herman**  
Morgan, Lewis & Bockius, LLP  
101 Park Ave.  
New York, NY 10178-0600

**Regina Stango Kelbon**  
Blank Rome LLP  
One Logan Square  
Philadelphia, PA 19103

**Jeffrey Kurtzman**  
Klehr, Harrison, Harvey, Branzburg & Eli  
260 South Broad Street  
Philadelphia, PA 19102-5003

**Richard E. Lear**  
Holland & Knight LLP  
2099 Pennsylvania Ave., NW #100  
Washington, DC 20006

**John E. Lucian**  
Blank Rome LLP  
One Logan Square  
130 N. 18th St  
Philadelphia, PA 19103-6998

**Richard M. Maseles**  
Missouri Department of Revenue  
301 W. High St.  
P.O. Box 475  
Jefferson City, MO 65102

**John G. McJunkin**  
McKenna Long & Aldridge LLP  
1900 K Street, NW  
Washington, DC 20006

**Michael D. Mueller**  
Christian & Barton, L.L.P.  
909 East Main St., Ste. 1200  
Richmond, VA 23219



**Service List**

**Robert B. Van Arsdale**  
Office of the U. S. Trustee  
701 East Broad Street, Suite 4304  
Richmond, VA 23219

**Elizabeth Weller**  
Linebarger Goggan Blair & Sampson, LLP  
2323 Bryan Street, Suite 1600  
Dallas, TX 75201

**J. Christian Word**  
Latham & Watkins LLP  
11955 Freedom Drive, Suite 500  
Reston, VA 20190-5651

**Nancy A. Washington**  
Saiber LLC  
One Gateway Center 13th Floor  
Newark, NJ 07102

**Robert S. Westermann**  
Hunton & Williams LLP  
951 East Byrd Street  
Richmond, VA 23219

**Jonathan W. Young**  
Wildman, Harrold, Allen & Dixon  
225 West Wacker Drive  
Chicago, IL 60606-1229

**Mitchell B. Weitzman**  
Bean, Kinney & Korman, P.C.  
2300 Wilson Blvd., 7th Floor  
Arlington, VA 22201

**Lori L. Winkelman**  
Quarles & Brady LLP  
2 North Central Avenue  
Phoenix, AZ 85004-2391

**Sheila G. deLa Cruz**  
Hirschler Fleischer, P.C.  
P.O. Box 500  
Richmond, VA 23218-0500